

FILED

JUL 26 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

MAURICE MACK,

Petitioner - Appellant,

v.

ANTHONY C. NEWLAND,

Respondent - Appellee.

No. 05-16121

D.C. No. CV-99-01726-LKK

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, Senior District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS and THOMAS, Circuit Judges.

California state prisoner Maurice Mack appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Mack contends that there was insufficient evidence to support his convictions because his use of cocaine coupled with his prior injury rendered him incapable of malice, premeditation or deliberation. We conclude that the state court's decision that there was sufficient evidence for a rational trier of fact to find the elements of first-degree murder was not contrary to or an unreasonable application of clearly established federal law, as determined by the United States Supreme Court. *See* 28 U.S.C. § 2254(d); *Jackson v. Virginia*, 443 U.S. 307, 324 (1979).

Mack contends that he is entitled to relief because of newly discovered evidence consisting of two declarations which purport to establish that he was intoxicated at the time of the killings. Because Mack has not shown either an independent constitutional violation during state court proceedings or conclusive evidence of his innocence, we reject this claim. *See Turner v. Calderon*, 281 F.3d 852, 872-73 (9th Cir. 2002).

AFFIRMED.